

109TH CONGRESS
1ST SESSION

H. R. 524

To amend the Internal Revenue Code of 1986 to provide incentives for
the conservation of water.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2005

Ms. BERKLEY introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide
incentives for the conservation of water.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Conservation
5 Incentive Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) a severe to extreme drought affected ap-
9 proximately 15 percent of the contiguous United
10 States as of the end of April 2004,

1 (2) about 32 percent of the contiguous United
2 States fell in the moderate to extreme drought cat-
3 egories at the end of April 2004,

4 (3) the Colorado River system is facing the
5 worst drought on record,

6 (4) the drought throughout the western United
7 States could persist for up to another 30 years,

8 (5) growing populations and changing values
9 have increased demands on water supplies and river
10 systems, resulting in water use and management
11 conflicts throughout the country, particularly in the
12 West, where the population is expected to increase
13 at least 30 percent in the next 20–25 years, and

14 (6) unless highly efficient water usage practices
15 can be developed and maintained in the West, it will
16 not be possible to provide the water needed to sus-
17 tain western ecosystems, as well as population
18 growth.

19 **SEC. 3. REFUNDABLE CREDIT FOR RESIDENTIAL WATER**
20 **CONSERVATION.**

21 (a) IN GENERAL.—Subpart C of part IV of sub-
22 chapter A of chapter 1 of the Internal Revenue Code of
23 1986 (relating to refundable credits) is amended by redes-
24 ignating section 36 as section 37 and by inserting after
25 section 35 the following new section:

1 **“SEC. 36. RESIDENTIAL WATER CONSERVATION.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
3 dividual, there shall be allowed as a credit against the tax
4 imposed by this chapter for the taxable year an amount
5 equal to the qualified water conservation expenditures
6 made by the taxpayer during the taxable year.

7 “(b) LIMITATIONS.—

8 “(1) MAXIMUM CREDIT.—The credit allowed
9 under subsection (a) for a taxable year shall not ex-
10 ceed \$1,000.

11 “(2) MINIMUM EXPENDITURES.—If the aggre-
12 gate qualified water conservation expenditures made
13 by the taxpayer during a taxable year is less than
14 \$50, the amount allowed as a credit under sub-
15 section (a) for the taxable year shall be zero.

16 “(3) PROPERTY STANDARDS.—No credit shall
17 be allowed under this section for an item of property
18 unless—

19 “(A) the original use of such property com-
20 mences with the taxpayer,

21 “(B) such property reasonably can be ex-
22 pected to remain in use for at least 5 years,
23 and

24 “(C) such property is installed on or in
25 connection with a dwelling unit located in the
26 United States and used as the principal resi-

1 dence (within the meaning of section 121) of
2 the taxpayer.

3 “(c) QUALIFIED WATER CONSERVATION EXPENDI-
4 TURES.—For purposes of this section—

5 “(1) IN GENERAL.—The term ‘qualified water
6 conservation expenditure’ means the amount paid
7 for qualified water conservation property.

8 “(2) QUALIFIED WATER CONSERVATION PROP-
9 ERTY.—The term ‘qualified water conservation prop-
10 erty’ means—

11 “(A) smart dual or multi program irriga-
12 tion clock that allows the watering of plant and
13 grass areas separately and which is capable of
14 adjusting the watering schedule based on the
15 watering needs of the landscape being watered,

16 “(B) water efficient landscaping, includ-
17 ing—

18 “(i) xeriscape (which is low-water use
19 native and non-native plants and grasses),
20 and

21 “(ii) artificial turf,

22 “(C) low-flow shower heads that use no
23 more than 3 gallons of water per minute,

24 “(D) ultra low-flush toilets that use no
25 more than 1.6 gallons of water per flush,

1 “(E) dual flush toilets that allow the con-
2 sumer to select either a short flush of 0.80 gal-
3 lons of water or a long flush of 1.6 gallons of
4 water,

5 “(F) drip irrigation,

6 “(G) high-efficiency clothes washing ma-
7 chine, and

8 “(H) any other property of a type specified
9 by the Secretary.

10 “(3) LIMITATION ON TYPES OF PROPERTY
11 SPECIFIED BY SECRETARY.—The Secretary may
12 only specify a type of property for purposes of para-
13 graph (2)(H) if—

14 “(A) the principal use of such property is
15 to reduce the amount of water consumed in any
16 existing residential process,

17 “(B) such property or the use of such
18 property is not harmful to persons or the envi-
19 ronment and does not induce the use of any
20 other item which may be hazardous to persons
21 or the environment, and

22 “(C) the Secretary determines that the
23 credit allowed under subsection (a) with respect
24 to such property, together with any other Fed-

1 eral subsidy of such property, is not superfluous
2 and inefficient.

3 “(d) SPECIAL RULES.—For purposes of this sec-
4 tion—

5 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
6 CUPANCY.—In the case of any dwelling unit which is
7 jointly occupied and used during any calendar year
8 as a residence by 2 or more individuals, the fol-
9 lowing rules shall apply:

10 “(A) The amount of the credit allowable
11 under subsection (a) by reason of expenditures
12 made during such calendar year by any of such
13 individuals with respect to such dwelling unit
14 shall be determined by treating all of such indi-
15 viduals as 1 taxpayer whose taxable year is
16 such calendar year.

17 “(B) There shall be allowable, with respect
18 to such expenditures to each of such individ-
19 uals, a credit under subsection (a) for the tax-
20 able year in which such calendar year ends in
21 an amount which bears the same ratio to the
22 amount determined under subparagraph (A) as
23 the amount of such expenditures made by such
24 individual during such calendar year bears to

1 the aggregate of such expenditures made by all
2 of such individuals during such calendar year.

3 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
4 HOUSING CORPORATION.—In the case of an indi-
5 vidual who is a tenant-stockholder (as defined in sec-
6 tion 216) in a cooperative housing corporation (as
7 defined in such section), such individual shall be
8 treated as having made the individual’s tenant-stock-
9 holder’s proportionate share (as defined in section
10 216(b)(3)) of any expenditures of such corporation.

11 “(3) CONDOMINIUMS.—

12 “(A) IN GENERAL.—In the case of an indi-
13 vidual who is a member of a condominium man-
14 agement association with respect to a condo-
15 minium which the individual owns, such indi-
16 vidual shall be treated as having made the indi-
17 vidual’s proportionate share of any expenditures
18 of such association.

19 “(B) CONDOMINIUM MANAGEMENT ASSO-
20 CIATION.—For purposes of this paragraph, the
21 term ‘condominium management association’
22 means an organization which meets the require-
23 ments of paragraph (1) of section 528(c) (other
24 than subparagraph (E) thereof) with respect to

1 a condominium project substantially all of the
2 units of which are used as residences.

3 “(4) ALLOCATION IN CERTAIN CASES.—If less
4 than 80 percent of the use of an item is for nonbusi-
5 ness purposes, only that portion of the expenditures
6 for such item which is properly allocable to use for
7 nonbusiness purposes shall be taken into account.

8 “(5) WHEN EXPENDITURE MADE; AMOUNT OF
9 EXPENDITURE.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), an expenditure with respect
12 to an item shall be treated as made when the
13 original installation of the item is completed.

14 “(B) EXPENDITURES PART OF BUILDING
15 CONSTRUCTION.—In the case of an expenditure
16 in connection with the construction or recon-
17 struction of a structure, such expenditure shall
18 be treated as made when the original use of the
19 constructed or reconstructed structure by the
20 taxpayer begins.

21 “(C) AMOUNT.—The amount of any ex-
22 penditure shall be the cost thereof.

23 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-
24 ERGY FINANCING.—For purposes of determining the
25 amount of expenditures made by any individual with

1 respect to any dwelling unit, there shall not be taken
 2 into account expenditures which are made from sub-
 3 sidized energy financing (as defined in section
 4 48(a)(4)(C)).

5 “(e) BASIS ADJUSTMENTS.—For purposes of this
 6 subtitle, if a credit is allowed under this section for any
 7 expenditure with respect to any property, the increase in
 8 the basis of such property which would (but for this sub-
 9 section) result from such expenditure shall be reduced by
 10 the amount of the credit so allowed.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 1016(a) of such Code is amended
 13 by striking “and” at the end of paragraph (30), by
 14 striking the period at the end of paragraph (31) and
 15 inserting “, and”, and by adding at the end the fol-
 16 lowing new paragraph:

17 “(32) to the extent provided in section 36(e), in
 18 the case of amounts with respect to which a credit
 19 has been allowed under section 36.”.

20 (2) The table of sections for subpart A of part
 21 IV of subchapter A of chapter 1 of such Code is
 22 amended by redesignating the item relating to sec-
 23 tion 36 as an item relating to section 37 and insert-
 24 ing before the item relating to section 37 the fol-
 25 lowing new item:

“Sec. 36. Residential water conservation.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to property placed in service after
 3 December 31, 2004.

4 **SEC. 4. CREDIT FOR WATER CONSERVATION.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
 6 chapter A of chapter 1 of the Internal Revenue Code of
 7 1986 (relating to business related credits) is amended by
 8 adding at the end the following new section:

9 **“SEC. 45I. COMMERCIAL WATER CONSERVATION CREDIT.**

10 “(a) IN GENERAL.—For purposes of section 38, in
 11 the case of a small employer, the credit determined under
 12 this section for the taxable year is an amount equal to
 13 10 percent of the aggregate adjusted bases of all qualified
 14 water conservation property installed in or in connection
 15 with the principal place of business (within the meaning
 16 of section 280A(c)(1)) of the taxpayer located in the
 17 United States.

18 “(b) DEFINITIONS.—For purposes of this section—

19 “(1) SMALL EMPLOYER.—

20 “(A) IN GENERAL.—The term ‘small em-
 21 ployer’ means, with respect to any taxable year,
 22 any employer if such employer employed an av-
 23 erage of 100 or fewer employees on business
 24 days during either of the 2 preceding calendar
 25 years. For purposes of the preceding sentence,

1 a preceding calendar year may be taken into ac-
2 count only if the employer was in existence
3 throughout such year.

4 “(B) EMPLOYERS NOT IN EXISTENCE IN
5 PRECEDING YEAR.—In the case of an employer
6 which was not in existence throughout the 1st
7 preceding taxable year, the determination under
8 subparagraph (A) shall be based on the average
9 number of employees that it is reasonably ex-
10 pected such employer will employ on business
11 days in the current taxable year.

12 “(C) SPECIAL RULES.—

13 “(i) CONTROLLED GROUPS.—For pur-
14 poses of this paragraph, all persons treated
15 as a single employer under subsection (b),
16 (c), (m), or (o) of section 414 shall be
17 treated as 1 employer.

18 “(ii) PREDECESSORS.—Any reference
19 in this paragraph to an employer shall in-
20 clude a reference to any predecessor of
21 such employer.

22 “(2) QUALIFIED WATER CONSERVATION PROP-
23 ERTY.—The term ‘qualified water conservation prop-
24 erty’ has the meaning given to such term by section
25 36(c)(2).

1 “(c) SPECIAL RULES.—For purposes of this sec-
2 tion—

3 “(1) IN GENERAL.—Rules similar to the rules
4 of section 36(d) (other than paragraph (4) thereof)
5 shall apply for purposes of this section.

6 “(2) COORDINATION WITH CERTAIN CREDITS.—

7 “(A) The basis of any property referred to
8 in subsection (a) shall be reduced by that por-
9 tion of the basis of any property which is attrib-
10 utable to qualified rehabilitation expenditures
11 (as defined in section 47(c)(2)) or to the energy
12 percentage of energy property (as determined
13 under section 48(a)).

14 “(B) Expenditures taken into account
15 under section 47 or 48(a) shall not be taken
16 into account under this section.

17 “(3) DENIAL OF DOUBLE BENEFIT.—No deduc-
18 tion or credit shall be allowed under this chapter for
19 any amount taken into account in determining the
20 credit under this section.

21 “(4) ELECTION NOT TO CLAIM CREDIT.—This
22 section shall not apply to a taxpayer for any taxable
23 year if such taxpayer elects to have this section not
24 apply for such taxable year.

1 “(d) BASIS ADJUSTMENT.—For purposes of this sub-
2 title, if a credit is determined under this section for any
3 expenditure with respect to any property, the increase in
4 the basis of such property which would (but for this sub-
5 section) result from such expenditure shall be reduced by
6 the amount of the credit so determined.”.

7 (b) CREDIT MADE PART OF GENERAL BUSINESS
8 CREDIT.—Section 38(b) of such Code (relating to current
9 year business credit) is amended by striking “plus” at the
10 end of paragraph (18), by striking the period at the end
11 of paragraph (19) and inserting “, plus”, and by adding
12 at the end the following new paragraph:

13 “(20) the commercial water conservation credit
14 determined under section 45I(a).”.

15 (c) BASIS ADJUSTMENT.—Subsection (a) of section
16 1016 of such Code is amended by striking “and” at the
17 end of paragraph (31), by striking the period at the end
18 of paragraph (32) and inserting “, and”, and by adding
19 at the end the following new paragraph:

20 “(33) to the extent provided in section 45I(d),
21 in the case of amounts with respect to which a credit
22 has been allowed under section 45I.”.

23 (d) CLERICAL AMENDMENT.—The table of sections
24 for subpart D of part IV of subchapter A of chapter 1

1 of such Code is amended by adding at the end the fol-
2 lowing new item:

“Sec. 45I. Commercial water conservation credit.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to property placed in service after
5 December 31, 2004.

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